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Attorneys for Plaintiffs F.B.T. Productions, LLC and Em2M, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

F.B.T. PRODUCTIONS, LLC, et al.,)	Case: 5:08-mc-80040-RMW (PVT)
)	[Related to Case: CV 07-03314 PSG (MANx)]
Plaintiffs,)	
v.)	
AFTERMATH RECORDS doing business as AFTERMATH ENTERTAINMENT, et al.,)	PLAINTIFFS' OBJECTIONS TO EVIDENCE SUBMITTED BY STEVE JOBS IN SUPPORT OF MOTION TO FOR PROTECTIVE ORDER TO QUASH "APEX" DEPOSITION SUBPOENA
)	
Defendants.)	[Opposition to Motion; Declaration of Eugene R. Long, Jr.; and Exhibits filed concurrently herewith]
)	

1)	DISCOVERY MATTER
2)	JURY DEMAND
3)	
4)	Date: April 29, 2008
5)	Time: 10:00 a.m.
6)	Courtroom: 5
)	Hon. Patricia Trumbull

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OBJECTIONS TO EVIDENCE

I. INTRODUCTION

Plaintiffs F.B.T. Productions, LLC (“F.B.T.”) and Em2M, LLC (“Em2M”) (collectively, “Plaintiffs”) hereby object and move to strike certain portions of the Declaration of Kevin Saul submitted by Steve Jobs (“Mr. Jobs”) in support of his motion for a protective order to quash the subpoena for deposition that Plaintiffs served upon him.

II. OBJECTIONS TO EVIDENCE

A. Declaration of Kevin Saul

Plaintiffs object to paragraph 17 of Kevin Saul's declaration based on Federal Rules of Evidence 602 and 801 *et seq.* Paragraph 17 of that declaration states the following:

“Thoughts on Music is intended for a popular audience. The essay does not constitute a legal opinion or analysis of contractual rights and obligations. It does not discuss the FBT action, the UMG agreements or any other agreements between artists and record companies. Nor does it analyze the structure of agreements between record labels and digital service providers. (Ex. E.).”

1. To the extent that paragraph 17 of the declaration is not based on the personal knowledge of the declarant, it is inadmissible pursuant to Federal Rule of Evidence 602.

2. To the extent that paragraph 17 is based on a statement heard by the declarant and offered for the truth of the matters asserted – that Mr. Jobs intended his *Thoughts On Music* (“the Essay”) for a popular audience and that it was not intended to

1 constitute legal opinion or an analysis of contract rights, it is hearsay not subject to an
2 exception. As a result, it is inadmissible pursuant to Federal Rules of Evidence 801 *et*
3 *seq.*

5 3. Essentially, Mr. Jobs, who is trying to avoid testifying at all costs, would like
6 to substitute the testimony of an in-house attorney at Apple for his own. Mr. Saul
7 does not say he was involved in the drafting of the Essay, or that he spoke to Mr. Jobs
8 at the time it was drafted and Mr. Jobs' explained his thought process to him. He does
9 not say Mr. Jobs told him he did not mean what he said in the Essay, or the Essay was
10 wrong. Even if Mr. Saul did all of that, plaintiffs would not be required to take Mr.
11 Saul's word for it, but should be able to question Mr. Jobs about his own personal
12 statement, his language, and whether he was telling the public the truth in his Essay.
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III. CONCLUSION

Based upon the foregoing, Plaintiffs respectfully request that the court decline to consider the above described evidence and strike it from Mr. Jobs' supporting papers.

DATED: April 16, 2008

Respectfully submitted,

KING & BALLOW

s/ Paul Duvall

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1 **Case No. C 08-80040 RMW (PVT)**
 2 **[Related to Case No. CV 07-3314 PSG (MANx) (C.D.Cal.)]**

3 **STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

4 I, Sherie Johnson, declare:

5 I am a resident of the State of California and employed in the County of San
 6 Diego, State of California. I am over the age of eighteen years, and not a party to the
 7 within action. My business address is 9404 Genesee Avenue; Suite 340; La Jolla, CA
 8 92037. On April 16, 2008 I served a true copy of the document entitled

9 **PLAINTIFFS' OBJECTIONS TO EVIDENCE SUBMITTED BY STEVE JOBS IN**
 10 **SUPPORT OF MOTION TO FOR PROTECTIVE ORDER TO QUASH "APEX"**
 11 **DEPOSITION SUBPOENA** by placing it in an overnight delivery envelope or
 12 package provided by an overnight delivery carrier and addressed as below. I placed
 13 the envelope or package for collection and overnight delivery at an office or a
 14 regularly utilized drop box of the overnight delivery carrier on April 16, 2008.

15	Glenn D. Pomerantz, Esq. Kelly M. Klaus, Esq. Kimberly D. Encinas, Esq. MUNGER, TOLLES & OLSON LLP 355 South Grand Avenue Thirty-Fifth Floor Los Angeles, CA 90071 Attorneys for Defendants	Daniel S. Schecter, Esq. Colin B. Vandell, Esq. LATHAM & WATKINS 633 West Fifth Street; Suite 4000 Los Angeles, CA 90071 Attorneys for Non-Party Deponent Steve Jobs	George A. Riley, Esq. O'MELVENY & MYERS LLP 275 Battery Street; Suite 2600 San Francisco, CA 94111 Attorneys for Non-Party Deponent Steve Jobs
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22 I declare under penalty of perjury that the above is true and correct.

23 Executed on April 16, 2008 at La Jolla, California.

26 /s/ Sherie Johnson

27 Sherie Johnson